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## COMMUNICATION

### RETURN TO NEVERLAND? FREEDOM OF INFORMATION AND THE HISTORY OF BRITISH INTELLIGENCE\*

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**ABSTRACT.** *This article considers the use of the UK Freedom of Information (FOI) Act in order to explore the history of British intelligence. While the intelligence and security agencies are themselves exempt from the Act, releasing only such archival material into the public domain as they see fit, the article will argue that this does not mean that FOI cannot be used productively in this area. Rather, by adopting a wider definition of 'intelligence', as advocated by Wesley K. Wark in this journal in 1992, FOI can be used as part of a broader research strategy to secure the release of information that allows the archival study of intelligence to move beyond the material released by the agencies themselves. The article will illustrate this point by drawing on relevant examples of successful FOI requests, while also highlighting some of the related practical challenges and limitations that its use has revealed.*

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The UK Freedom of Information Act (2000) came into force on 1 January 2005, providing everyone with the right to ask for information from public sector bodies, including central government departments.<sup>1</sup> Unless covered by one of the exemptions included in the Act, the department concerned has an obligation to provide the information requested within twenty working days. The use of FOI by both politicians and journalists has resulted in a number of high-profile, and sometimes controversial, stories appearing in the national press (to say nothing of its use by those with an interest in UFOs), yet its use by academics appears to have been less marked.<sup>2</sup> Prior to its enactment,

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<sup>1</sup> [www.direct.gov.uk/en/governmentcitizensandrights/yourrightsandresponsibilities/dg\\_4003239](http://www.direct.gov.uk/en/governmentcitizensandrights/yourrightsandresponsibilities/dg_4003239). For further information on the origins and development of the Freedom of Information Act, see [www.ucl.ac.uk/constitution-unit/research/foi/what-is-foi2](http://www.ucl.ac.uk/constitution-unit/research/foi/what-is-foi2).

<sup>2</sup> See, for example, the release of information relating to 'Black Wednesday', 16 Sept. 1992, when John Major's Conservative government was forced to withdraw the pound from the European Exchange Rate Mechanism. The information was released by the treasury in February 2005, with a general election looming – a point that was not missed by a number of

Andrew McDonald predicted that the new legislation would 'force historians . . . to think in new ways about access to their sources'. However, writing a few years after the introduction of the Act, Andrew Flinn and Harriet Jones observed that 'relatively few historians are making regular use of FOI as a tool'.<sup>3</sup> While no definitive figures detailing the use of FOI by historians are available, data obtained through the use of the Act itself for the purpose of this article appears to support this observation.<sup>4</sup>

For those interested in the history of the British intelligence community, a lack of engagement with FOI can be explained by the fact that the intelligence and security services fall outside its provisions, in marked contrast to the comparable legislation in the United States, where FOI has become an important tool for research into the history of US intelligence.<sup>5</sup> There are

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Conservative politicians; Oliver Letwin, then shadow chancellor, suggested that the Act had been used with 'maximum effect to achieve a propaganda coup' (Matthew Tempest, 'Treasury papers reveal cost of Black Wednesday', *Guardian*, 9 Feb. 2005; 'Treasury releases 1992 ERM papers', *BBC News*, 9 Feb. 2005, [http://news.bbc.co.uk/1/hi/uk\\_politics/4248855.stm](http://news.bbc.co.uk/1/hi/uk_politics/4248855.stm)). At one point, the Ministry of Defence received more requests for information on UFOs than any other topic, an administrative burden which was subsequently relieved by the decision in 2007 to declassify the department's entire UFO archive to the National Archives, Kew ('Files released on UFO sightings', *BBC News*, 14 May 2008, <http://news.bbc.co.uk/1/hi/7398108.stm>); Nick Pope, 'UFOs: the (boring) truth is out there', *Guardian*, 18 Feb. 2010, <http://www.guardian.co.uk/commentisfree/2010/feb/18/ufos-the-boring-truth>).

<sup>3</sup> Andrew McDonald, 'Freedom of information and the historian', *Twentieth Century British History* 12 (2001), pp. 93–4, at p. 93; Andrew Flinn and Harriet Jones, 'The Freedom of Information Act in practice: the historian's perspective', in Andrew Flinn and Harriet Jones (eds.), *Freedom of information: open access, empty archives?* (London, 2009), p. 39.

<sup>4</sup> Academics were responsible for 811 from a total of 21,294 FOI requests placed with the Ministry of Defence between January 2005 and August 2011. In contrast, journalist and other media-driven requests account for 2,610. (Information provided by ministry of defence (MOD), 10 Nov. 2011.) A similar pattern can be found elsewhere; between March 2006 and the end of October 2011, the ministry of justice received 2,363 requests from journalists, 1,859 from business and 369 from charities and lobby groups. Academics accounted for just 210 of over 17,000 requests. (Information provided by ministry of justice, 31 Oct. 2011.) Similarly, the Treasury Solicitor's Office received just seven requests from academics out of a total of 619. (Information provided by Treasury Solicitor's Office, 26 Nov. 2011.) Such figures must, however, be considered with two significant caveats. FOI is both applicant and motive 'blind'; users have no obligation to disclose information regarding their background, or to reveal the purpose of the request. As such, 10,358 requesters logged at the MOD are 'Not Specified', a number which could include further requests from historians. In addition, a number of government departments were unwilling to comply with the original request for information on uses of the Act, citing concerns over data protection.

<sup>5</sup> Enacted in 1966, the US Freedom of Information Act has become an important tool for studying the history of the US intelligence agencies. On the use of US FOI legislation, see Bernard Wasserstein, 'Joys and frustrations of FOIA', *Twentieth Century British History*, 12 (2001), pp. 95–105, and Raymond M. Lee, 'Research uses of the U. S. Freedom of Information Act', *Field Methods*, 13 (2001), pp. 370–91. Alongside other agencies, the Central Intelligence Agency (CIA) accepts requests under the Act, and makes released material freely available online (see 'Freedom of Information Act electronic reading room', [www.foia.cia.gov/](http://www.foia.cia.gov/)). The National Security Archive, based at George Washington University's Gelman Library, holds a large collection of documents from the State and Defence Departments, the Central

twenty-three areas of 'Exempt Information' listed by the Act (Sections 21–4 and 26–44), one of which, Section 23, deals with 'Information supplied by, or relating to, bodies dealing with security matters.'<sup>6</sup> These bodies include the Security Service (MI5), the Secret Intelligence Service (MI6), Government Communications Headquarters, Special Forces, and the National Criminal Intelligence Service.<sup>7</sup> As such, FOI requests made directly to the agencies themselves would unquestionably constitute a waste of the time of both the researcher and the recipient. Yet, this inability to use FOI to access intelligence and security *agency*-specific material should not preclude FOI requests being made that venture into the wider realm of intelligence and security affairs.

# I

When considering the use of FOI in relation to intelligence history, it is useful briefly to chart the trajectory of research in this area over the past three decades. Conducting research into British intelligence and security matters prior to the 1990s was a difficult task. The official secrecy in which the civilian intelligence and security agencies were shrouded was such that they lacked a statutory footing, and their archives remained firmly closed to researchers. Yet although such research was challenging, it was not impossible. Writing in the *Historical Journal* in 1992, Wesley K. Wark detailed a number of strategies that could help circumvent the continued retention of the records of the agencies themselves. In addition to the use of personal testimony and published memoirs, Wark called upon researchers to:

adopt a more radical definition of the nature of intelligence archives, and to turn our sights from the question of explaining what secret agencies did or do, to how governments think and act. If our task is so defined, the intelligence archive becomes much more capacious and much more resistant to the apparatus of sections 3(4) and 5(1) of the public records act and related measures of censorship. For the intelligence archive becomes the record of all those government departments who receive, incorporate, digest and report on intelligence that comes to them from both secret and overt sources.<sup>8</sup>

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Intelligence Agency (CIA), National Security Agency (NSA), and other government agencies, that have been secured through FOI (see [www.gwu.edu/~nsarchiv/index.html](http://www.gwu.edu/~nsarchiv/index.html)).

<sup>6</sup> See 'Section 23', [www.legislation.gov.uk/ukpga/2000/36/section/23](http://www.legislation.gov.uk/ukpga/2000/36/section/23). For further information on the scope of the exemption, see 'Exempt guidance for freedom of information (FOI)', [www.justice.gov.uk/information-access-rights/foi-guidance-for-practitioners/exemptions-guidance](http://www.justice.gov.uk/information-access-rights/foi-guidance-for-practitioners/exemptions-guidance).

<sup>7</sup> Freedom of Information Act (Original as Enacted), [www.legislation.gov.uk/ukpga/2000/36/contents](http://www.legislation.gov.uk/ukpga/2000/36/contents).

<sup>8</sup> Wesley K. Wark, 'In never-never land? The British archives on intelligence', *Historical Journal* 35 (1992), pp. 195–203, at p. 201. The article was soon followed by a 'sequel' that discussed the early results of the Waldegrave Initiative: Richard J. Aldrich, 'British and American policy on intelligence archive: never-never land and wonderland?', *Contemporary Record*, 8 (1994), pp. 132–50.

Wark's proposed approach was already in evidence in a number of published works that used the accessible official records with a view to gaining some insight into intelligence and security affairs: David Stafford's *Britain and the European resistance*, widely regarded as a ground-breaking study of the wartime Special Operations Executive (SOE), had been written without access to what survived of the SOE archive. Rather, acknowledging that SOE, while an organization in its own right, 'was instructed to confine itself to the *execution* of policy decisions made by others', Stafford made extensive use of released material found in other file series that were concerned with the work of the organization, specifically 'the files of the Prime Minister, Chiefs of Staff and related committees, and, to a lesser extent, the Foreign Office'.<sup>9</sup> A few years later, *The missing dimension: governments and intelligence in the twentieth century*, edited by Christopher Andrew and David Dilks, further illustrated what could be achieved through the use of material found in the files of non-secret government departments, the editors noting that historians 'have been far more put off the subject of intelligence than they need have been', their collection illustrating 'what can be reliably based on existing archives and published source material'.<sup>10</sup>

At the time of publication of Wark's article, a sea change was taking place in terms of official attitudes towards the secrecy in which the intelligence and security agencies had been traditionally shrouded, which resulted in both their public avowal and changes in archival release policy. The Open Government Initiative, launched by William Waldegrave and Douglas Hurd in 1992, resulted in the release of thousands of documents, previously withheld, into the public domain at the Public Record Office (now the National Archives), including the bulk of the surviving SOE archive.<sup>11</sup> Within a few years, the Security Service began to release batches of its own historical papers, a practice which continues to the present day, operating outside the remit of FOI.<sup>12</sup> Such a significant increase in the availability of official archival material inevitably had an impact upon the historical study of intelligence and security issues. The new openness was, however, greeted with caution in some quarters, as concern was expressed over the dangers it posed by way of information control.<sup>13</sup> Leaving aside concerns about the control exercised by the authorities over what could be

<sup>9</sup> David Stafford, *Britain and the European resistance* (Toronto, 1980), p. xi.

<sup>10</sup> Christopher Andrew and David Dilks, eds., *The missing dimension: governments and intelligence in the twentieth century* (London, 1984), p. 4.

<sup>11</sup> For further discussion of the Waldegrave Initiative, see Richard J. Aldrich, 'The Waldegrave Initiative and secret service archives: new materials and new policies', *Intelligence and National Security*, 10 (1995), pp. 192–7; idem, 'Did Waldegrave work? The impact of open government upon British history', *Twentieth Century British History*, 9 (1998), pp. 111–26.

<sup>12</sup> For further information on Security Service file release, retention, and destruction policy, see [www.mi5.gov.uk/home/about-us/how-we-operate/managing-information/retention-and-destruction-of-files.html](http://www.mi5.gov.uk/home/about-us/how-we-operate/managing-information/retention-and-destruction-of-files.html).

<sup>13</sup> See, for example, Peter Gill, 'Reasserting control: recent changes in the oversight of the UK intelligence community', *Intelligence and National Security*, 11 (Apr. 1996), pp. 313–31.

released – be that control benign or otherwise – the increased availability of archival intelligence and security *agency* material also presented the researcher with the temptation to adopt an altogether narrower archival research strategy to their subject than had hitherto been the case. What Aldrich had earlier described as the ‘well worn path to Kew’ was now extended with a new, but quickly well-trodden, path towards certain key file series, including the HS (SOE), HW (GC&CS) and KV (Security Service) collections.<sup>14</sup> Concern has been expressed about this newfound ability to work extensively with agency material, and with its potential to exacerbate what Aldrich and Ferris have both characterized as ‘trainspotter’-like tendencies in the field.<sup>15</sup> Echoing the observation made earlier by Andrew and Dilks, Ferris has observed that ‘official records always contained more material on intelligence than was generally realized’. However, pinpointing this material was not necessarily straightforward:

the problem was that finding them took much time and effort. The new releases make intelligence easier to discover, but at a price. Once, when found, such records were embedded in their decision-making context, easing judgement as to what they affected, and how. Now, intelligence is more accessible but stands alone; the problem is to find its context. The situation manifests the tendency to fetishize and to sensationalize intelligence.<sup>16</sup>

The issue is also bound up with a wider, definitional question faced by researchers in the field: what *is* ‘intelligence’? In one of the earliest academic studies of the subject, Sherman Kent offered three different definitions; intelligence as ‘a kind of knowledge’, the organization ‘which produces the knowledge’, and ‘the activity pursued by the intelligence organization’.<sup>17</sup> It is clear that these definitions, which continue to be reflected in more recent

<sup>14</sup> While the Security Service releases its own archival material, SIS continues to observe a strict policy of non-disclosure. Government Communications Headquarters (GCHQ) has released considerable material about the work of its predecessor, the Government Code and Cypher School (GC&CS) during the interwar years and the Second World War, but little from its own post-1945 archive. As Bennett notes, ‘Records dating from after VJ day are not normally released, except in cases such as the collaborative contribution to the “Venona” release, or where a story is taken beyond that date in the interests of completeness’ (Gill Bennett, ‘Declassification and release policies of the UK’s intelligence agencies’, *Intelligence and National Security*, 17 (2002), pp. 21–32, at p. 26).

<sup>15</sup> Drawing on earlier remarks made by John Lewis Gaddis, Aldrich suggests that his observation that some work in the field ‘is the equivalent of “military buffism” – a kind of secret service train-spotting’ continues to hold true, while Ferris has more bluntly observed that ‘the missing dimension is filled with train-spotters’ (Richard J. Aldrich, “Grow your own”: Cold War intelligence and history supermarkets’, *Intelligence and National Security*, 17 (2002), pp. 135–52, at p. 138; John Ferris, ‘The road to Bletchley Park: the British experience with signals intelligence, 1892–1945’, *Intelligence and National Security*, 17 (2002), pp. 53–84, at p. 54).

<sup>16</sup> Ferris, ‘The road to Bletchley Park’, p. 54.

<sup>17</sup> Sherman Kent, *Strategic intelligence for American world policy* (Hamden, CT, 1965 edn), Introduction, p. xxiii, cited in Michael Herman, *Intelligence power in peace and war* (Cambridge, 1996), Introduction, pp. 1–2.

efforts to pin down the word, would likely favour, and certainly benefit from, the extensive and detailed study of agency material. Yet, such definitions do not satisfy everyone – nor, indeed, does the product of such studies: Aldrich notes the existence of somewhat insular works, that appear ‘content to catalogue operational details and matters of tradecraft, while expending little energy in investigating their broader importance’, while Ferris reminds the reader that intelligence ‘influences decisions but does not make them’.<sup>18</sup> Such observations can themselves be associated with another definition of intelligence which sees the agencies, their activities, and the ‘product’ they produce as feeding into a wider decision-making process on the part of policy-makers. Acknowledging that some broader studies ‘of intelligence and decision-making’ have appeared, such as Andrew’s *For the president’s eyes only*, Aldrich notes that such a ‘contextual approach’ remains ‘the exception rather than the rule’.<sup>19</sup> It is in the furtherance of such an approach to intelligence that FOI offers a potentially valuable opportunity. Recalling Wark’s point that “intelligence” is not simply what the secret services do – an observation recently characterized as ‘crucial’ by R. Gerald Hughes and Len Scott – it is worth noting that, while the intelligence and security agencies themselves are exempt from the legislation, those government departments that ‘receive, incorporate, digest and report on intelligence that comes to them’ are not.<sup>20</sup> As such, while Michael Goodman is entirely correct to note that the exemptions that cover the intelligence and security agencies mean that FOI requests can only be made to ‘the Defence Intelligence Staff... or the Joint Intelligence Committee’, the observation must be considered in a strictly institutional context.<sup>21</sup> Engaging with FOI offers some opportunity to further the study of intelligence and security history *beyond* the archives of the agencies themselves.

This opportunity, however, does have clear limitations: in making use of FOI in an effort to locate intelligence and security issues within their wider context, researchers face the relevant exemption – Section 23 – which covers ‘Information supplied by, or relating to, bodies dealing with security matters.’<sup>22</sup> The phrasing of the exemption could render anything that touched upon the work of the intelligence and security agencies found in the files of Whitehall departments as beyond the right of access provided by the Act. However, guidance issued on the application of Section 23, while acknowledging that the

<sup>18</sup> Aldrich, ‘Cold War intelligence and history supermarkets’, p. 138; Ferris, ‘The road to Bletchley Park’, p. 55.

<sup>19</sup> Aldrich, ‘Cold War intelligence and history supermarkets’, p. 138.

<sup>20</sup> Wark, ‘The British archives on intelligence’, p. 202; R. Gerald Hughes and Len Scott, “Knowledge is never too dear”: exploring intelligence archives’, in R. Gerald Hughes, Peter Jackson, and Len Scott, eds., *Exploring intelligence archives: enquiries into the secret state* (Abingdon, 2008), p. 2.

<sup>21</sup> Michael S. Goodman, ‘The dog that didn’t bark: the Joint Intelligence Committee and the warning of aggression’, *Cold War History*, 7 (2007), pp. 529–51, at p. 530.

<sup>22</sup> ‘Section 23’, [www.legislation.gov.uk/ukpga/2000/36/section/23](http://www.legislation.gov.uk/ukpga/2000/36/section/23).

term ‘has the potential to be applied to a wide range of situations’, also recognizes that ‘there will be a point when the connection between the requested information and a security body is too remote to engage the exemption’.<sup>23</sup> The limitations of the exemption were illustrated by one of the earliest releases added to the Cabinet Office online FOI ‘Reading Room’; information concerning the appointment of the incoming head of SIS, Sir John Scarlett.<sup>24</sup> Further, while Section 23 is an absolute exemption that does not face a public interest test, this only holds true for more recent material; *historical* records, when transferred to the National Archives, become subject to a public interest test.<sup>25</sup> Here, while information ‘may still be sensitive and warrant the use of section 23’, requests ‘should be judged on a case by case basis, consulting as appropriate’.<sup>26</sup> The remainder of this article will present further examples of intelligence and security-related material that has been brought to light through the use of FOI, before proceeding to offer some practical observations as to its application and pointing to its limitations.

## II

In the case of British Cold War special operations, relatively few documents have entered into the public domain and historians have been forced to look further afield for details of ‘covert action’.<sup>27</sup> However, a successful FOI request to the Foreign and Commonwealth Office (FCO) shed light on a Cold War special operation; Operation *Valuable*, the joint Anglo-American scheme to penetrate

<sup>23</sup> ‘Security Bodies (Section 23)’, [www.ico.org.uk/for\\_organisations/freedom\\_of\\_information/guide/~media/documents/library/Freedom\\_of\\_Information/Detailed\\_specialist\\_guides/security\\_bodies\\_section\\_23\\_foi.ashx](http://www.ico.org.uk/for_organisations/freedom_of_information/guide/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/security_bodies_section_23_foi.ashx).

<sup>24</sup> ‘Appointment of John Scarlett as head of MI6’. The description continued: ‘This document brings together all records leading up to and concerning the appointment of John Scarlett as the Head of MI6 in June 2004. The Cabinet Office has released the information in response to a request under the Freedom of Information Act.’ This material has since been removed. The gov.uk website now offers a searchable facility for FOI releases felt to be of wider public interest, which covers all central government departments. At the time of writing, this facility dates back only to May 2010. See [www.gov.uk/government/publications](http://www.gov.uk/government/publications).

<sup>25</sup> While not specifically defined by the Act itself, the Information Commissioner’s Office explains being ‘in the public interest’ as ‘something which serves the interests of the public. When applying the test, the public authority is simply deciding whether in any particular case it serves the interests of the public better to withhold or to disclose information’ (Information Commissioner’s Office, ‘Freedom of Information Act awareness guidance no 3: the public interest test’, [www.ico.org.uk/upload/documents/library/freedom\\_of\\_information/detailed\\_specialist\\_guides/awareness\\_guidance\\_3\\_-\\_public\\_interest\\_test.pdf](http://www.ico.org.uk/upload/documents/library/freedom_of_information/detailed_specialist_guides/awareness_guidance_3_-_public_interest_test.pdf)).

<sup>26</sup> ‘Ministry of justice freedom of information guidance, exemptions guidance Section 23: information supplied by, or relating to, bodies dealing with security matters’, [www.justice.gov.uk/downloads/information-access-rights/foi/foi-exemption-s23.pdf](http://www.justice.gov.uk/downloads/information-access-rights/foi/foi-exemption-s23.pdf) (Mar. 2012).

<sup>27</sup> Some of the rare insights into such activities have emerged from the private papers and correspondence of senior ministers and officials in government. One notable example was the discovery by Matthew Jones of a joint SIS–CIA plan for covert action in Syria in 1955 (Matthew Jones, ‘The “preferred plan”: the Anglo-American working group report on covert action in Syria, 1957’, *Intelligence and National Security*, 19 (2004), pp. 401–15).



Albania in 1949. Up to this point, details of the operation, unofficially documented in earlier accounts, were absent from the National Archives and it was only in 2010 that its planning and implementation were documented by Keith Jeffery in his authorized history of SIS.<sup>28</sup> The released material included a briefing note sent to the prime minister, Clement Attlee, in March 1949, by Sir William Strang, permanent under-secretary at the Foreign Office, and two related papers. The first suggested the insertion of 'Albanian or Albanian-speaking W/T operators' into the south of the country to create an intelligence network capable of verifying whether conditions were favourable for 'insurrectionary purposes' involving the arming of anti-Communist supporters. The plan, Strang wrote, was 'admittedly ... venturesome' but 'the prizes to be won are worth the risk involved'.<sup>29</sup> The second paper by the chief of SIS, Sir Stewart Menzies, warned that it was not worth conducting preliminary operations unless ministers were 'prepared to follow them up by striking as hard as possible'.<sup>30</sup> Though extracts from the documents had been quoted by Jeffery, the released material contained a further significant addition that offered an insight into Attlee's attitude towards special operations. On 28 March, two days after Strang had forwarded the proposals, Attlee scribbled on the top of Strang's covering letter: 'I should like an appreciation of Albanian personalities. Are they not possibly for sale?'<sup>31</sup> The comment offers a stark contrast to the popular image of Attlee as being apathetic towards special operations.<sup>32</sup> The next month, ministerial authorisation was given.<sup>33</sup>

FOI has also provided new insights into Britain's domestic Cold War activities, allowing studies of early Cold War Britain to move beyond changes in government vetting procedures and look at offensive anti-Communist counter-measures. Released papers on the Committee on Communism (Home) offer a tantalizing insight into such activities until 1953. Formed two years earlier, the committee was tasked with collecting 'all available intelligence' about domestic Communist activities, to make recommendations to ministers, and to co-ordinate any counter-measures subsequently approved. Chaired by the cabinet secretary, Sir Norman Brook, it included representatives from across Whitehall, including MI5, the Home Office, and the Foreign Office.<sup>34</sup> The papers chart the development and early operations of the 'Home Desk' of the Foreign Office's Information Research Department (IRD). Until now, the

<sup>28</sup> Keith Jeffery, *MI6: the history of the Secret Intelligence Service, 1909-1949* (London, 2010). For a popular account of the operation, see Nicholas Bethell, *The great betrayal: the untold story of Kim Philby's greatest coup* (London, 1984).

<sup>29</sup> 'Policy Towards Albania', 21 Mar. 1949, The National Archives (TNA), FO 800/437.

<sup>30</sup> Menzies to Strang, 4 Mar. 1949, TNA, FO 800/437.

<sup>31</sup> 'Policy towards Albania', 21 Mar. 1949, TNA, FO 800/437.

<sup>32</sup> Richard J. Aldrich, *The hidden hand: Britain, America and Cold War secret intelligence* (London, 2001), p. 144.

<sup>33</sup> Jeffery, *MI6*, p. 714.

<sup>34</sup> AC (H) (51)1, Official Committee on Communism (Home), constitution and terms of reference of the committee, 7 June 1951, TNA, CAB 21/4317.

operations – and even existence – of the section have been absent from accounts of the department, with only Paul Lashmar and James Oliver detailing IRD's domestic activities in any real depth.<sup>35</sup>

While the released papers refute claims that IRD extensively manipulated public opinion, as Peter Weiler argues, they show that the Foreign Office, given the reluctance of Home Office officials to engage in offensive counter-measures, took a leading role in domestic anti-Communist activities, proposing a multi-faceted campaign to educate influential sections of the public on Soviet aims and methods.<sup>36</sup> Previously, the department had no formal mandate to intervene in domestic affairs, though it had briefed, at varying times, select journalists and organizations, including the Labour party. At first, IRD's contribution to the new campaign was relatively modest; in October 1951, just weeks after its formation, the 'Home Desk' numbered just four individuals, including representatives from the ministries of labour and education, though it established useful links and compiled a detailed intelligence picture.<sup>37</sup> The output of this section was limited to influential groups, including Union officials, the Armed Forces, and hand-picked school inspectors, on account of a fear of Communism in the classroom.<sup>38</sup> By 1952, IRD was the 'focus' for the collection and dissemination of intelligence on domestic Communist activities and produced regular reports using press cuttings and other sources of information for Whitehall consumers.<sup>39</sup>

FOI has also proved to be of value in securing the release of material that illustrates official attitudes towards the secrecy in which the intelligence and security agencies were shrouded for much of the twentieth century.<sup>40</sup> A request for information concerning the publication of F. W. Winterbotham's *The ultra secret* in 1974 resulted in the release of a number of documents, including a paper entitled 'The official history of intelligence in World War II and related subjects', which was sent to Dick White, a member of the Steering Committee guiding the official history of wartime intelligence that was being written by Professor F. H. Hinsley, on 7 November 1975. The paper illustrated how a number of interrelated issues had fundamentally undermined the traditional

<sup>35</sup> Paul Lashmar and James Oliver, *Britain's secret propaganda war, 1948–1977* (Stroud, 1998), pp. 105–15.

<sup>36</sup> Peter Weiler, *British labour and the Cold War* (Stanford, CA, 1988), pp. 190–1.

<sup>37</sup> AC (H) (51) 5th meeting, 2 Oct. 1951, TNA, CAB 134/737.

<sup>38</sup> AC (H) (52) 1st meeting, 12 Mar. 1952, TNA, CAB 134/737.

<sup>39</sup> AC (H) (52) 2nd meeting, 24 Mar. 1952, TNA, CAB 134/737. For more information on IRD's domestic activities, see Daniel W. B. Lomas, 'Labour ministers, intelligence and domestic anti-Communism, 1945–1951', *Journal of Intelligence History*, 12 (2013), pp. 113–33.

<sup>40</sup> See Richard J. Aldrich, 'Policing the past: official history, secrecy and British intelligence since 1945', *English Historical Review*, 119 (2004), pp. 922–53; E. D. R. Harrison, 'J. C. Masterman and the Security Service, 1940–1972', *Intelligence and National Security*, 24 (2009), pp. 769–804; Christopher R. Moran, *Classified: secrecy and the state in modern Britain* (Cambridge, 2012); Christopher J. Murphy, 'The origins of SOE in France', *Historical Journal*, 46 (2003), pp. 935–52.

policy of non-disclosure towards wartime intelligence activity. No matter how 'desirable' the continuation of the traditional stance 'that HMG does not admit to, or comment on, its intelligence activities' may have been, the paper conceded that this had 'been breached so many times . . . that a new situation has been created'.<sup>41</sup> This represented a significant shift in the official mindset towards such matters, and was certainly a far cry from the blanket ban adopted by the Joint Intelligence Committee (JIC) in July 1945, at which point it was agreed that wartime 'special intelligence' – i.e. Ultra – 'should NEVER be disclosed'.<sup>42</sup>

Publication of *The ultra secret* was considered by the paper to represent a significant moment in the creation of this 'new situation'. While the authorities had traditionally 'attempted to deter authors from writing on UK intelligence organisation and activity', their ability to do so was shaken by Winterbotham's account of wartime codebreaking activity, which was described as the 'crunch' moment.<sup>43</sup> To a certain extent, this moment was one of the authorities' own making. Initially 'deterred from publishing', Winterbotham had changed his mind in light of the appearance of two publications; Gustave Bertrand's *Enigma* and J. C. Masterman's *The double-cross system*, the latter of which, the report admitted, had been 'published with HMG's tacit approval'. As such, it was considered that a threat of prosecution under the Official Secrets Act was not only 'unlikely to succeed', but could also 'prove counter-productive by arousing undesirable publicity'; a reference, at least in part, to the fact that the revelation of official complicity in the publication of Masterman's account of the double-cross system would likely follow.

*The ultra secret* 'aroused considerable interest', leading others 'involved in wartime Sigint' either to write their own accounts, or express their intention to do so, now having recourse to a precedent that the authorities would be hard pressed to challenge. Alongside this continued battle against unofficial authors, which was dealt a severe blow by Winterbotham's actions, the 1967 Public Records Act had replaced the fifty-year rule for the release of official documents with a shorter thirty-year rule, forcing the authorities to consider the question of whether Second World War intelligence material could be released into the public domain. Publication of *The ultra secret* also proved to have another, altogether unexpected, consequence as it brought the attention of both the authorities and the wider public to the earlier, accidental release of wartime intelligence material. The serialization of Winterbotham's book in the *Sunday Telegraph* had been followed by a letter to the editor, in which the correspondent noted that Winterbotham's account had 'clarified the TOP SECRET

<sup>41</sup> 'The official history of intelligence in World War II and related subjects'. The document has since been released to the National Archives in CAB 103/733.

<sup>42</sup> 'Use of special intelligence by official historians', JIC(45)223(0)(Final), 20.07.45, Annex 1: draft directive – general directive for safeguarding intelligence sources in compiling official histories, TNA, CAB 103/288.

<sup>43</sup> 'The official history of intelligence in World War II and related subjects'.

ULTRA and other references he had found in the Public Record Office'. An investigation followed, which revealed that army and air intelligence records, released by the ministry of defence and available to the public 'for some time', had 'contained a quite substantial proportion of highly classified intelligence', and 'revealed a good deal about wartime intelligence sources'. The 'fiasco', which saw the material temporarily closed so that the 'Really sensitive' material could be withdrawn, led to the review of Second World War Naval intelligence records for release, similarly 'expunged', in order to maintain a consistent release policy.

### III

While the use of FOI has resulted in the release of new material, we do not wish to exaggerate its effectiveness. Its usefulness is limited, for example, when conducting research on intelligence liaison. Here, in addition to Section 23, historians face the application of further exemptions which can prevent the release of information acquired from foreign governments, as failed attempts to access information on the Commonwealth Security Conferences of 1948 and 1951 illustrate. Although some material relating to both conferences has already entered the public domain, the Cabinet Office, while acknowledging they held the information requested, continued to withhold it.<sup>44</sup> Alongside Section 23 of the Act, the information was also subject to Section 27(1), which prevents the release of information if its disclosure would, or would be likely to, prejudice 'relations between the United Kingdom and any other State' or 'the interests of the United Kingdom abroad'. Section 27(2), relating to 'confidential information' from another state, also applied. Having considered the arguments in favour of public disclosure, the Cabinet Office ruled to retain the information to preserve 'the trust of our international partners'.<sup>45</sup> A similar request for access to closed records from Britain's Washington embassy saw the FCO invoke 27(1) (a), fearing that release of the material would prejudice external diplomatic relations; it was felt that disclosure would result in 'a real and significant risk... to UK relations with the United States'.<sup>46</sup>

It is also important to note that the use of FOI should not be characterized as an 'easy' research option. In order to make a successful request, one must know

<sup>44</sup> See TNA, PREM 8/1343 ('Letter from prime minister to prime ministers of Canada, Australia, New Zealand and South Africa on discussion of security at autumn conference: counter-action of Soviet infiltration methods; conference on security to be held, May 1951; Sir Percy Sillitoe to visit New Zealand', 1948–51); TNA, PREM 8/1274 ('Commonwealth security and exchange of information (Part 2)', 1950); and TNA, PREM 11/349 ('Commonwealth security conference to be held in London in June 1953: visit by Sir Percy Sillitoe to New Zealand to advise on local security', 1951–3).

<sup>45</sup> Letter from Openness Team, Knowledge and Information Management Unit, Cabinet Office, 9 Feb. 2011.

<sup>46</sup> Letter from Historical FOI Team, Information Management Department, FCO, 22 Feb. 2011; letter from head of corporate records, FCO, 22 Feb. 2011.

enough about the subject to ensure that it cannot be rejected on the grounds of being too vague, or too vast, to answer within the FOI cost framework.<sup>47</sup> A request made to the Home Office soon after the Act came into force, asking for 'all available information' on *Spycatcher* fell foul of this criteria; in response, the Home Office noted that 'to comply with your request would exceed the cost limit beyond which we are not required to supply information', and suggested narrowing it down: 'For example, you may like to detail more exactly the piece of correspondence or papers in which you are interested.'<sup>48</sup> Given the secrecy in which intelligence and security matters are enveloped, it will likely frequently prove difficult to present a detailed request for specific papers. Older material offers the opportunity of spotting 'gaps' in the National Archives' catalogue; the release of information on Operation *Valuable*, detailed above, resulted from a request to the Foreign and Commonwealth Office for access to FO 800/437, a file listed on the catalogue, but without a description or date. Part of a collection of the working papers of the foreign secretary, Ernest Bevin, the file was sandwiched between entries for 'Albania' (1946) and 'Atomic Energy' (1945–51), presenting the possibility that it contained details about British policy towards Albania, including *Valuable*. In response, the FCO confirmed suspicions that the file contained details about the operation, and explained that the contents of the file were considered 'sensitive' under Section 23, and would continue to be retained.<sup>49</sup> Over a fortnight later, and after a further review, the earlier decision was reversed and the file 'released in full'.<sup>50</sup>

A further significant practical issue that can complicate use of the Act is the time factor, FOI being described by Maurice Frankel, director of the Campaign for Freedom of Information, as a 'deceptively slow process'.<sup>51</sup> While stipulating that a public body should respond within twenty working days, the process can take much longer, particularly if the requester has to challenge a decision not to release the material. The release of documents on the Committee on Communism (Home), detailed above, effectively illustrates this point; some nineteen months passed between the lodging of the initial request, in October 2010, and the eventual release of material in May 2012. The Cabinet Office initially refused to disclose the papers, citing Section 23 of the Act, a decision that was upheld following a request for an internal review.<sup>52</sup> An appeal was subsequently lodged with the Office of the Information Commissioner (ICO), which is tasked with overseeing the implementation of FOI and helping 'citizens

<sup>47</sup> The cost ceiling for central government departments when dealing with FOI requests was initially set at £600; this was based on a calculation that saw work on requests charged at £25 per hour, equating at a maximum of three and a half days work on a request.

<sup>48</sup> Letter from the Home Office, 30 Mar. 2005.

<sup>49</sup> Email from Historical FOI Team, Information Management Department, FCO, 5 Oct. 2010. <sup>50</sup> Letter from head of corporate records, FCO, 21 Oct. 2010.

<sup>51</sup> Maurice Frankel, 'Freedom of Information Act: don't feel obliged to take no for an answer', *Independent*, 5 Feb. 2005.

<sup>52</sup> Letter from PA to director of propriety and ethics, Cabinet Office, 27 Oct. 2011.

and consumers assert their...right to know'.<sup>53</sup> The issue was subsequently resolved without formal action. The ICO wrote to the Cabinet Office, asking 'whether there is scope to resolve this case informally'.<sup>54</sup> Subsequent discussions prompted the Cabinet Office to agree to release the early papers of the Committee on Communism (Home) in October 2011, though the material only became available to view in May 2012 following consultations with other government departments.<sup>55</sup>

While the use of FOI brings with it new problems and challenges, further engagement with the Act is needed before these can be discussed in any great depth. For example, while efforts are made to draw attention to released material that is likely to be of wider interest via departmental websites, the question of the widespread dissemination of material released to an individual remains problematic, the current situation serving 'not to release information into the public domain, but rather to create an oligarchy of information-holders where previously there was a monopoly'.<sup>56</sup> Given that material released from more contemporary files may well be 'weeded' prior to its eventual transfer to the National Archives, it is not necessarily simply a question of waiting for a subsequent archival release. Historians of all sub-disciplines who use FOI should therefore give some consideration to the ultimate 'home' of material released to them once the relevant research project has been completed, beyond gathering dust in the attic. The question of just how useful 'fragments' of history gathered through FOI can be also requires further attention. While the material on the *Official history of intelligence during the Second World War*, discussed above, provided some useful insights, the papers had been plucked out of their place in the official record, making it difficult to appreciate them fully until they appeared within thick Cabinet Office files released to the National Archives some years later. A further point worthy of consideration concerns the fact that

<sup>53</sup> Introduction by Christopher Graham, the information commissioner, during the inaugural ICO Alan Turing Lecture held at the Museum of Science and Industry, Manchester, 11 Sept. 2012, [www.youtube.com/watch?v=3k1NbD1n7bo](http://www.youtube.com/watch?v=3k1NbD1n7bo). During 2011/12, the ICO received over 4,500 complaints related to FOI, 24 per cent of which related to central government departments. In nearly half of all FOI cases brought before the ICO, the complaint could be resolved informally, without the need for the commissioner to resort to the issuing of a decision notice, and thereby forcing an authority to release the relevant information requested (information commissioner's annual report and financial statements 2011/12, [www.ico.org.uk/about\\_us/performance/~/\\_media/documents/library/Corporate/Research\\_and\\_reports/annual\\_report\\_2012.ashx](http://www.ico.org.uk/about_us/performance/~/_media/documents/library/Corporate/Research_and_reports/annual_report_2012.ashx)).

<sup>54</sup> Email from Information Commissioner's Office 13 Sept. 2011.

<sup>55</sup> Email from Knowledge and Information Management, Cabinet Office, 27 Oct. 2011. The file was subsequently released to the National Archives in October 2012. See 'Communism committee records released to The National Archives', [www.nationalarchives.gov.uk/news/775.htm](http://www.nationalarchives.gov.uk/news/775.htm).

<sup>56</sup> Eunan O'Halpin, 'Problems in obtaining and using official records for research in Irish and British history in the twenty-first century', in Flinn and Jones, eds., *Freedom of information*, p. 148. This is not always the case with the results of FOI requests, which can also result in the release of the material in question to the National Archives.

FOI offers access to *information*; not necessarily to copies of full documents. Rather, a request may well result in the release of a 'digest' of relevant information. Both methods of release may raise questions over the nature of the presentation of information provided to the requester.

Such issues underline the fact that FOI is far from a silver bullet; rather, it constitutes a potentially useful facet of a wider research methodology, one which has the potential to impact positively upon other long-standing approaches, such as the use of oral testimony. When used successfully to secure access to material less than thirty years old, the use of FOI has the potential to heighten the significance of conducting interviews with participants in the events documented by the written record, an observation that was made shortly after the introduction of the Act by Anthony Seldon who, while welcoming FOI, stressed the continued importance of oral history.<sup>57</sup> Interviewing has previously been recognized as being 'invaluable in clarifying the meaning of a document', but prior to FOI the opportunities for such interaction were limited on account of the tendency for papers to be released into the public domain 'just as the last valuable witnesses are shuffling off the mortal coil'.<sup>58</sup> In addition to providing useful commentary on a released document, an interview held prior to the making of an FOI request could also provide valuable information in order to target the request more effectively.

#### IV

This article has illustrated how freedom of information can be used in order to cast further light upon British intelligence and security history, despite the exemption of the agencies themselves from the provisions of the Act, and has acknowledged some of the problems that may be encountered along the way. While recognizing its limitations, we nevertheless believe that our efforts illustrate that FOI can be beneficial, a conclusion similarly drawn by those involved in research into nuclear history, another traditionally highly secretive area of the British state.<sup>59</sup>

The use of FOI could, of course, be criticized by those who caution against overreliance on the official record as constituting the archival research

<sup>57</sup> John Crace, 'Where's the beef?', *Guardian*, 11 Jan. 2005.

<sup>58</sup> Aldrich, 'Cold War intelligence and history supermarkets', pp. 146–7.

<sup>59</sup> While certain sensitive material inevitably remains off limits, Kristan Stoddart has noted that FOI has altered research in the field 'a great deal', a position supported by Matthew Grant, who notes that FOI has provided a steady 'stream' of information since it came into force. Kristan Stoddart, 'The British Labour government and the development of Chevaline, 1974–1979', *Cold War History*, 10 (2010), pp. 287–314, at p. 288; Matthew Grant, *After the bomb: civil defence and nuclear war in Britain, 1945–1968* (Basingstoke, 2010), p. 5. According to the British Nuclear History Study Group based at the Mountbatten Centre for International Studies, Southampton University, the 'post-Cold War culture of openness and the 2005 Freedom of Information Act' made 'a lot more primary-source information... available to researchers' ('British Nuclear History', [www.mcis.soton.ac.uk/programmes/bnhistory.php](http://www.mcis.soton.ac.uk/programmes/bnhistory.php)).

equivalent of *Oliver Twist*, asking for more of the same; that is, more official documents that will be processed – selected, reviewed, and possibly redacted or summarized – prior to their release. Yet, while control over what is, ultimately, released remains firmly in the hands of the authorities, FOI offers researchers the opportunity to prod the dark and mysterious recesses of unreleased material; to question the existing declassification agenda and challenge the decisions that have resulted in its non-disclosure. In some cases, this may result in the release of further useful material; at the very least, the FOI request itself will likely, although not always, result in an acknowledgement of the existence of material, even if it is to remain off limits, challenging the secrecy that surrounds it and potentially reducing the number of ‘unknown unknowns’.<sup>60</sup> Meanwhile, by detailing the exemptions under which the continued retention of material is justified, FOI can help to foster a greater degree of understanding, if not ultimately agreement, between the official and the historian.

<sup>60</sup> Section 23 includes an exemption from the Act’s requirement to confirm whether or not the information requested is actually held; Section 23(5) ‘allows the public authority to neither confirm nor deny that it holds the information’, known as NCND (see [www.ico.org.uk/for\\_organisations/freedom\\_of\\_information/guide/~/\\_media/documents/library/Freedom\\_of\\_Information/Detailed\\_specialist\\_guides/security\\_bodies\\_section\\_23\\_foi.ashx](http://www.ico.org.uk/for_organisations/freedom_of_information/guide/~/_media/documents/library/Freedom_of_Information/Detailed_specialist_guides/security_bodies_section_23_foi.ashx)). In response to a request for information on a 1946 Directive issued to MI5’s director-general, the Cabinet Office gave the following response: ‘In reliance on the exclusion in Section 23(5) of the Freedom of Information Act, which relates to bodies dealing with security matters, I can neither confirm nor deny whether there is any information held which is subject to Section 23(1) of the Act’ (email from Openness Team, Knowledge and Information Management Unit, Cabinet Office, 19 June 2012). Our own experience with the Act suggests at least that the use of NCND is a somewhat rare occurrence.